IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2204 OF 2006

Sitaram Manguram Yogi ...Appellant

Versus

Municipal Corporation of
Greater Bombay ...Respondent

Shri Nitin Mulye for the Appellant.
Shri J.J.Xavier for the Respondent.

CORAM : A. S. OKA, J.

DATE : JANUARY 09, 2007.

P.C.:

1. Heard the Advocate for the Appellant and the Advocate for the Respondent. I have perused the pleadings and notes of evidence as well as other relevant documents. The Appellant is the original Plaintiff who filed a suit simplicitor for injunction restraining the Respondent-Corporation from demolishing the suit structure viz; built-up structure admeasuring 10feet X 10feet and idol of Hanuman and roof upon the structure. A written statement was filed by the Respondent Corporation contending that the structure has been demolished and therefore, a suit simplicitor for injunction does not survive. The trial Court has accepted the said case relying upon the admission of

the Appellant in cross-examination and has dismissed the suit.

2. The learned Advocate for the Appellant submitted that the Respondent- Corporation has not produced any material to show that the structure has been demolished. He submits that the platform on which idol was installed is still in existence. He submitted that the Respondent-Corporation cannot proceed without following due process of law.

3. I have considered the submissions. Perusal of the plaint shows that relief is claimed in respect of a built-up structure admeasuring 10feet X 10feet. It is not the case made out in the plaint that the structure has been lawfully constructed or that it was protected by one of the policies of the Respondent-Corporation.

4. In cross-examination the Appellant has stated thus:

> "6. The present suit is in respect of Hanuman Temple. The said temple is constructed with B.M.Wall and it is admeasuring 10 X 8 feet. It is true that the

> corporation has demolished the entire temple. It is true I have not given notice under section 527 of MMC Act to the defendant before filing of this suit".

Thus, there is an unqualified admission by the Appellant that the entire temple has been demolished by the Respondent. In view of this admission, the learned Trial Judge was right in holding that the suit simplicitor for injunction was not at all maintainable as the structure has been admittedly demolished. There is no reason to interfere. Appeal is dismissed. No orders as to costs. Civil Application does not survive and the same is rejected.

JUDGE